Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1783

ALONZO SMITH,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

REPLY BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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No. 79-1783

ALONZO SMITH,

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REPLY BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Memorandum Decision and Judgment Entry of the Court of Appeals of the First Appellate District of Ohio, entered October 31, 1979, is reproduced herein as "Appendix A". The decision of the Supreme Court of Ohio, denying review, entered February 8, 1980, is reproduced herein as "Appendix B".

JURISDICTION

The United States Supreme Court is authorized to review the decisions of state courts under 28 U.S.C. Section 1257 which in pertinent part provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *

> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or stautes of, or commission held or authority exercised under, the United States." June 25, 1948, c.646, 62 Stat. 929.

The decision of the Ohio Supreme Court was entered on February 8, 1980. While the issues raised by petitioner do fall within the scope of 28 U.S.C. Section 1257, respondent respectfully submits that these issues do not justify review by this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

B. OHIO REVISED CODE SECTION 2923.13, HAVING WEAPONS UNDER DISABILITY:

(A) Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall knowing-

ly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

(1) Such person is a fugitive from justice;

(2) Such person is under indictment for or has been convicted of any felony of violence, or has been adjudged a juvenile delinquent for commission of any such felony;

(3) Such person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, or has been adjudged a juvenile delinquent for commission of any such offense;

(4) Such person is drug dependent or in danger of drug dependence, or is a chronic alcoholic;

(5) Such person is under adjudication of mental incompetence.

(B) Whoever violates this section is guilty of having weapons while under disability, a felony of the fourth degree.

C. OHIO REVISED CODE SECTION 2925.11, DRUG ABUSE:

(A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719, 4715, 4729, 4731, and 4741 of the Revised Code. This section does not apply to any person who obtained the controlled substance pursuant to a prescription issued by a practitioner, where the drug is in the original container in which it was dispensed to such person.

(C) Whoever violates this section is guilty of drug abuse:

(1) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, drug abuse is a felony of the fourth degree, and if the offender has previously been convicted of a drug abuse offense, drug abuse is a felony of the third degree.

(2) If the drug involved is a compound, mixture, preparation, or substance included in schedule III, IV, or V, drug abuse is a misdemeanor of the third degree, and if the offender has previously been convicted of a drug abuse offense, drug abuse is a misdemeanor of the second degree.

(3) If the drug involved is marihuana, drug abuse is a misdemeanor of the fourth degree, unless the amount of marihuana involved is less than one hundred grams, the amount of marihuana resin, or extraction or preparation of such resin, is less than five grams, and the amount of such resin in a liquid concentrate, liquid extract, or liquid distillate form, is less than one gram, in which case drug abuse is a minor misdemeanor.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

QUESTIONS PRESENTED FOR REVIEW

I

DOES AN AFFIDAVIT FOR A SEARCH WARRANT PROVIDE A MAGISTRATE WITH PROBABLE CAUSE WHEN IT IS BASED UPON HEARSAY INFORMATION FROM A CONFIDENTIAL AND RELIABLE INFORMANT AND PROVIDES A BASIS TO THE MAGISTRATE FOR CONCLUDING THE INFORMANT WAS RELIABLE AND A BASIS FOR CONCLUDING THAT THE INFORMANT RECEIVED HIS INFORMATION IN A RELIABLE WAY?

II

CAN NARCOTICS OFFICERS PROPERLY SEIZE A GUN FOUND IN A NIGHTSTAND ALONG WITH THE MARIJUANA, WHICH WAS THE OBJECT OF A SEARCH WARRANT AS MERE EVIDENCE TO PROVE PETITIONER KNOWINGLY POSSESSED THE MARIJUANA, WHEN THE PETITIONER ADMITS THE GUN BELONGS TO HIM?

STATEMENT OF THE CASE

On May 30, 1978, Petitioner was indicted by the Grand Jury of Hamilton County, Ohio. The indictment contained two counts charging Petitioner with Drug Abuse under Ohio Revised Code 2925.11 and Having Weapons under Disability defined by Ohio Revised Code 2923.13.

A motion to suppress evidence was heard by the trial court on November 27, 1978. At that hearing the evidence demonstrated that a search warrant (Appendix C) was issued on April 11, 1978, by Judge Ranz of the Hamilton

County Municipal Court. The affidavit for the search warrant after describing a specific address provided:

> "The affiant has received information from a confidential and reliable informant who has given this officer and brother officers of the Regional Enforcement Narcotics Unit information that has been proven reliable through independent investigation by the affiant. This informant has been in the above described premises within the past 72 hours and has observed marijuana. This informant knows marijuana from past use of this Drug."

The warrant was issued for 3115 Durrell Avenue, Apt. #13, in Cincinnati, Ohio.

The warrant was executed and a search conducted. Among the items seized was a loaded .25 caliber automatic pistol, $6,034.00 in cash, and a large quantity of marijuana (TP 13). Petitioner admitted to the officers executing the warrant that the gun was his (TP 22). The marijuana, gun, and cash were found together in a nightstand (TP 13, 15). An amount of cocaine was found separately in a closet (TP 12).

Further the officer who executed the warrant indicated that he was familiar with Petitioner's background (TP 18). At trial it was stipulated that included in Petitioner's background was a prior felony conviction which gave rise to a weapons disability set out in Ohio Revised Code 2923.-13 (TP 42). After considering the evidence presented at the hearing on the motion to suppress, the motion was overruled.

The Petitioner then waived his right to trial by jury and was tried by the court. The trial court, on November 27, 1978, found Petitioner guilty as charged and sentenced him to concurrent terms of two to ten years in the Ohio Penitentiary on the Drug Abuse charge and two to five years on the Weapons charge.

The decision of the trial court was affirmed by the First District Court of Appeals for Hamilton County, Ohio, on October 31, 1979. (Appendix A). The Ohio Supreme Court declined to review the decision of the Court of Appeals on February 8, 1980. (Appendix B)

A petition for a Writ of Certiorari was filed by Petitioner on or about May 6, 1980.

REASONS FOR DENYING WRIT

I

A SEARCH WARRANT IS PROPERLY GRANTED BASED UPON AN AFFIDAVIT CONTAINING HEARSAY FROM A CONFIDENTIAL AND RELIABLE INFORMANT WHERE THE AFFIDAVIT PROVIDES THE MAGISTRATE WITH A BASIS FOR CONCLUDING THAT THE INFORMANT WAS RELIABLE AND INFORMS THE MAGISTRATE THAT THE INFORMANT OBTAINED THE INFORMATION IN A RELIABLE WAY.

This Court sixteen years ago in *Aguillar* v. *State of Texas,* 378 U.S. 108, 84 S. Ct. 1509 (1964) set out the following test for reviewing affidavits for search warrants:

> "Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, *Jones* v. *United States,* 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer

> concluded that the informant, whose identity need not be disclosed, see *Rugendorf* v. *United States,* 376 U.S. 528, 84 S. Ct. 825 was 'credible' or his information 'reliable'." *Aguillar* v. *Texas,* supra, at page 114.

This Court reaffirmed this ruling in *Spinelli* v. *United States,* 393 U.S. 410, 89 S. Ct. 584 (1969) but cautioned other courts that they must use common sense in reviewing such warrants. This Court stated:

> ". . . we do not retreat from the established propositions that only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause, *Beck* v. *Ohio,* 379 U.S. 89, 96, 95 S. Ct. 223, 228, 13 L. Ed. 2d 142 (1964); that affidavits of probable cause are tested by much less rigorous standards than those governing the admissibility of evidence at trial, *McCray* v. *Illinois,* 386 U.S. 300, 311, 87 S. Ct. 1056, 1062 (1967); that in judging probable cause issuing magistrates are not to be confined by niggardly limitations or by restrictions on the use of their common sense, *United States* v. *Ventresca,* 380 U.S. 102, 108, 85 S. Ct. 741, 745 (1965); and that their determination of probable cause should be paid great deference by reviewing courts, *Jones* v. *United States,* 362 U.S. 257, 270-271, 80 S. Ct. 725, 735-736 (1968)." *Spinelli* v. *United States,* supra at 419.

It is therefore respectfully submitted that the affidavit, when hearsay from an informant is relied upon, must provide a basis for crediting the informant as well as a basis for relying on his information. In short, the magistrate must be told in the affidavit why the affiant believes the informant is telling the truth and that the informant gained the information in a reliable way.

In the case at bar the affidavit in pertinent part provides:

> "The Affiant has received information from a confidential and reliable informant who has given this offi-

> cer and brother officers of the Regional Enforcement Narcotics Unit information that has been proven reliable through independent investigation by the affiant. This informant has been in the above described premises within the past 72 hours and has observed marijuana. This informant knows marijuana from past use of this drug."

This portion of the affidavit in the case at bar is similar to one this Court approved in *Rugendorf* v. *United States,* 376 U.S. 528, 530, 84 S. Ct. 825, 827 (1964). The affidavit in *Rugendorf* v. *United States,* in pertinent part, stated:

> ". . . further, Agent McCormick advised this affiant that another confidential informant who has furnished reliable information to the Federal Bureau of Investigation in the past told McCormick that Leo Rugendorf . . ." *Rugendorf* v. *United States,* supra, at 530.

This is significant in that this Court relied on *Rugendorf* v. *United States,* supra, in establishing the first part of the *Aguillar* v. *Texas,* supra, test dealing with the credibility of the informant.

As for the second part of the test in *Aguillar* v. *Texas,* supra, the affidavit states that the informant acquired the information in the most reliable way possible. It stated he was on the premises and saw the contraband.

It is respectfully submitted that the affidavit in the case at bar meets the long established test set out by this Court in *Aguillar* v. *Texas,* supra, and *Spinelli* v. *United States,* supra. Further, the portion of the affidavit challenged by Petitioner is almost identical to one which this Court approved in formulating the test used in *Aguillar* v. *Texas,* supra. Thus, the Writ of Certiorari should be denied because the Courts of Ohio in the action below have followed the well established precedents of this Court.

II

WHERE NARCOTICS OFFICERS IN EXECUTING A SEARCH WARRANT FIND A GUN ALONG WITH THE MARIJUANA SPECIFIED IN THE WARRANT, AND WHERE PETITIONER ADMITS THAT THE GUN BELONGS TO HIM, THE OFFICERS MAY SEIZE THE GUN AS MERE EVIDENCE OF THE CRIME OF DRUG ABUSE BECAUSE IT COULD BE USED TO PROVE THAT PETITIONER KNOWINGLY POSSESSED THE MARIJUANA FOUND WITH THE GUN.

The second and final issue raised by Petitioner concerns the execution of the warrant by the Regional Enforcement Narcotic Unit. The Narcotics officers, after being admitted by Petitioner to his residence, discovered in a night stand marijuana, which was the subject of the search, along with a gun and six thousand thirty-four dollars in United States currency. The officer seized all three items.

This Court in *Andreson* v. *Maryland,* 427 U.S. 463, 483, 96 S. Ct. 2737, 2749, (1976) in ruling on this issue held:

> "In *Warden* v. *Hayden,* 387 U.S. at 307, 87 S. Ct. at 1650, the Court stated that when the police seize 'mere evidence', probable cause must be examined in terms of cause to believe that the evidence sought will aid in a particular apprehension or conviction. In so doing, consideration of police purposes will be required". In this case, *we conclude that the trained special investigators reasonably could have believed that the evidence specifically dealing with another lot in the Potomac Woods subdivision could be used to show petitioner's intent with respect to the Lot 13T transaction."* (Emphasis ours.)

The Court went on to hold that the "mere" evidence not directly dealing with Lot 13-T and which was used to secure additional charges against Petitioner was properly seized despite the fact that the warrant directed the officers to seize only items dealing with 13-T. It is respectfully submitted that under the rule of *Andreson* v. *Maryland,* supra, evidence found which *could* be used by police to prove the crimes specified in the warrant may properly be seized.

Applying this decision to the case at bar, it becomes quite apparent that the gun was properly seized. The officers involved were trained narcotics officers. They knew that one of the elements of the crime they were investigating, Drug Abuse defined in Ohio Revised Code 2925.11, required that knowing possession of a controlled substance be proven beyond a reasonable doubt. Since the gun was found with the marijuana, in the night stand, the officers could have concluded that Petitioner's admission that the gun belonged to him as well as possible fingerprints or serial numbers on the gun could help prove Petitioner's knowledgeable possession of the marijuana and money. Therefore, under the rule set out by this Court in *Andreson* v. *Maryland,* supra, the police properly seized the gun.

Since this Court has recently dealt with this very issue and the Ohio Courts have followed holdings of this Court, a Writ of Certiorari should not be granted.

CONCLUSION

Petitioner has presented two issues in this case. For reasons set out in the prior arguments this Court should not grant the Writ of Certiorari. Additionally, since the Ohio Courts correctly applied the law set out by this Court, the judgment and sentence should be affirmed.

Respectfully submitted,

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Prosecuting Attorney

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Assistant Prosecuting Attorney

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Assistant Prosecuting Attorney

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Attorneys for Respondent

APPENDIX "A"

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

NO. C-780822

STATE OF OHIO,
Plaintiff-Appellee,

vs.

ALONZO SMITH,
Defendant-Appellant.

MEMORANDUM DECISION AND JUDGMENT ENTRY
(Filed October 31, 1979)

Messrs. Simon L. Leis, Jr. and Thomas P. Longano, 420 Hamilton County Court House, Court and Main Streets, Cincinnati, Ohio 45202, for Plaintiff-Appellee,

Mr. Henry E. Sheldon, II, 4545 Carew Tower, Cincinnati, Ohio 45202, for Defendant-Appellant.

PER CURIAM.

This cause came on to be heard upon the appeal, the transcript of the docket, journal entries and original papers from the Court of Common Pleas of Hamilton County, Ohio, the transcript of the proceedings, briefs and oral arguments of counsel.

The single assignment of error having been fully considered it is accordingly passed upon in conformity with App. R. 12 (A) as set forth herein.

Defendant-appellant Smith was charged in a two count indictment with possession of cocaine and having a weapon while under disability. The trial court overruled a motion to suppress evidence. Smith ultimately was found guilty as charged and sentenced to the Ohio Penitentiary. This appeal ensued with the following verbatim assignment of error:

> The trial court substantially erred to the prejudice of appellant in denying the motion to suppress evidence.

The appellant challenges the affidavit which supported the search warrant.[1] In *State* v. *Karr,* (1975), 44 Ohio St. 2d 163, 339 N.E.2d 641, the Supreme Court had before it the issue of the legal sufficiency of affidavits almost identical to the one *sub judice.* The Supreme Court, in deciding that the affidavits were adequate, held *inter alia*:

> The affidavits in the instant cases, sparse though they may be, satisfy the test in *Aguilar.* No reason appears to read into Crim R. 41 (C) a stricter standard, and we cannot say that the magistrates failed to perform their detached and independent function. The preference to be accorded warrants requires that these be upheld. [44 Ohio St. 2d at 167; 339 N.E.2d at 645.]

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[1] The affidavit states:

> The Affiant has received information from a confidential and reliable informant who has given this officer and brother officers of the Regional Enforcement Narcotics Unit information that has been proven reliable through independent investigation by the affiant. This informant has been in the above described premises within the past 72 hours and has observed marijuana. This informant knows marijuana from past use of this drug.

The appellant contends that *State* v. *Gill* (1977), 49 Ohio St. 2d 177, 360 N.E.2d 693, supports his assignment of error. The Supreme Court in *Gill* found the factual pattern therein distinguishable from *Karr,* and we find the affidavit before us now distinguishable from the *Gill* affidavit. *Karr* controls here and thus the appellant's challenge to the sufficiency of the affidavit proves meritless.

Armed with a search warrant, the affidavit for which we have validated above, the police searched a closet in the bedroom of Smith's apartment and discovered cocaine.[2] Smith was in his apartment throughout the search. The police proceeded to search in the same room and found a loaded .25 automatic pistol "in the night stand of the bedroom." The pistol was seized and served as a basis for the count of the indictment that Smith had a weapon while under disability, and for the conviction thereon. Appellant claims that the automatic pistol was unlawfully seized and should have been suppressed. The state asserts that the police knew Smith's background and being familiar with it they had probable cause to believe that Smith was under disability, thereby constituting the handgun contraband and within the scope of the search warrant. It is true, as the transcript reveals, that one of the police officers testified as follows in response to the trial judge's inquiry:

THE COURT: Okay, and did you know anything about his [Smith's] background?

THE WITNESS: Yes, sir.

This colloquy fails to provide adequate proof of the officer's awareness that Smith had been previously convicted of felonies and thus could not legally possess any firearm or dangerous ordnance. The officer's terse reply simply is too unspecific to demonstrate his knowledge of Smith's

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[2] The cocaine weighed 0.62 gram.

criminal convictions. We regret that appellee in its approximately one page treatment of this particular issue provides us with little that is helpful, and our independent search, although limited in scope, has developed no controlling authority governing the exact factual situation before us. Entry upon the premises here was authorized and the search (pursuant to a search warrant) which followed was valid. Discovery of the pistol was within reasonable limits of the search. Moreover, we believe the police officers had probable cause to seize it because the facts and circumstances present — including, of course, discovery of the contraband cocaine — warranted a prudent man in taking possession of the pistol. It was reasonable for them to believe that Smith's possession of it might have some independent criminal significance or in some reasonable way be directly connected with his illegal possession of cocaine. It may have developed that the weapon would have no criminal significance, but nevertheless reasonable grounds existed for the seizure of it found as it was in the apartment with the cocaine. Moreover, Smith was present during the search and the availability of a loaded weapon to him arguably presented a potentially dangerous situation. Under the circumstances the police may well have been remiss in the performance of their duty had they not taken the pistol.

Although admittedly confronted with a distinguishable factual situation, nevertheless the following language of the U.S. Supreme Court in *Chimel* v. *California* (1959), 395 U.S. 752 is apt:

> A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control" — construing that phrase to mean

> the area from within which he might gain possession of a weapon. . . . [P. 763]

In *Chimel* the court acknowledged that the recurring questions of the reasonableness of searches depend upon the circumstances and "total atmosphere" of each case. Seizure of the pistol was reasonable in the atmosphere here present.[3]

Resultantly, we find no merit in the assignment and overrule it.

The assignment of error properly before this Court having been ruled upon as heretofore set forth, it is the Order of this Court that the judgment or final order herein appealed from be, and the same hereby is, affirmed.

It is further Ordered that a mandate be sent to the Court of Common Pleas of Hamilton County, Ohio, for execution upon this judgment.

Costs to be taxed in compliance with Rule 24, Appellate Rules.

And the Court being of the opinion that there were reasonable grounds for this appeal, allows no penalty.

It is further Ordered that a certified copy of this Memorandum Decision and Judgment shall constitute the mandate pursuant to App. R. 27.

To all of which the appellant by his counsel, excepts.

KEEFE, P. J., BETTMAN and BLACK, J. J.

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[3] Compare *State* v. *Fields* (1971), 29 Ohio App. 2d 154, 279 N.E.2d 616, in which the legality of a seizure of items other than those specifically described in a search warrant is discussed.

APPENDIX "B"

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,) To wit: February 8, 1980
City of Columbus.) 1980 TERM

STATE OF OHIO,

Appellee,

vs.

ALONZO SMITH,

Appellant.

No. 79-1641

APPEAL FROM THE COURT OF APPEALS
for Hamilton County

(Entered February 22, 1980)

This cause, here on appeal as of right from the Court of Appeals for Hamilton County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Hamilton County for entry.

[DULY CERTIFIED]

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,) To wit: February 8, 1980
City of Columbus.) 1980 TERM

STATE OF OHIO,

Appellee,

vs.

ALONZO SMITH,

Appellant.

No. 79-1641

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS
for Hamilton County

(Entered February 22, 1980)

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Henry E. Sheldon, II.

[DULY CERTIFIED]

APPENDIX "C"

DEFENDANT'S EXHIBIT 1

AFFIDAVIT FOR SEARCH WARRANT

STATE OF OHIO
HAMILTON COUNTY SS:

Agent Clifford George, Regional Enforcement Narcotics Unit, being first duly cautioned and sworn, deposes and says that within the jurisdiction of the Hamilton County Municipal Court, at: the premises located at 3115 Durrell Apartment 13, City of Cincinnati, Hamilton County, State of Ohio, being a multi-unit apartment building, constructed of brick (red and white in color) and such apartment being occupied by a male Negroe, he believes and has good cause to believe that at said place there are concealed marijuana, scales and articles used for packaging and distributing, and that said items are concealed in violation of law, to-wit: 2925.11 Drug Abuse.

Such belief is supported by the following facts: The Affiant has received information from a confidential and reliable informant who has given this officer and brother officers of the Regional Enforcement Narcotics Unit information that has been proven reliable through independent investigation by the Affiant. This informant has been in the above described premises within the past 72 hours and has observed marijuana. This informant knows marijuana from past use of this drug.

Affiant further says that there is urgent necessity that the search be conducted in the nighttime.

The informant states that they are a large number of persons who frequent this location and it is felt by the

affiant that any delay in the execution of this warrant could result in the fruits of the crime moved to another location out of the jurisdiction of the courts.

Sworn to, subscribed before me, and filed in this Court this 11th day of April, 1978 at 2:50 A.M.

By /s/ JOHN H. RANZ, Judge

Judge, Hamilton County Municipal Court

/s/ AGENT CLIFFORD GEORGE
Affiant

DEFENDANT'S EXHIBIT 2

SEARCH WARRANT
HAMILTON COUNTY MUNICIPAL COURT

STATE OF OHIO
HAMILTON COUNTY SS:

To the Police Chief of the City of Cincinnati, Ohio, Greetings: Whereas, there has been filed with me an affidavit, a copy of which is attached hereto and incorporated herein, these are therefore, to command you in the name of the State of Ohio, with the necessary and proper assistance, to enter, in the night time, into the premises located at 3115 Durrell, Apartment 13 in the City of Cincinnati, Hamilton County, State of Ohio which is a multi unit apartment building constructed of brick (red and white in color) in the county aforesaid, and there diligently search for the goods, chattels, or articles to wit: marijuana and that you bring the same, or any part thereof,

found on such search, also the body (s) of any person (s) found to be in control or the possession of such contraband forthwith before me, or some other judge or magistrate of the county having cognizance thereof, to be disposed of and dealt with according to law.

Given under my hand this 11th day of April, 1978, at 2:50 A.M. o'clock.

/s/ JOHN H. RANZ, Judge
Judge, Hamilton County Municipal Court

RETURN ON SEARCH WARRANT

On the 11th day of April, 1978, at 0345 o'clock A.M. I executed the search warrant attached hereto, and removed from said premises in the presence of: Alonzo Smith, Elmer Wise, Bill Engelman, Cliff George property of which the following is an inventory:

1—glass vial white powder, 1 cigarette case with mar. cigarettes, 2 baggies of brown substance, one glass with mar. cigarette; 25 cal. auto. re-pistol, 3 pipes, cigarette papers, white trash baggie, 1 address book, one red plastic bottle, $6,034.00 U.S. currency, and that is all.